

A bill for an act

relating to public safety; recodifying and clarifying the domestic abuse no contact order law; expanding the tampering with a witness crime; increasing the maximum bail for nonfelony domestic assault and domestic abuse order for protection violations; clarifying the requirement that the data communications network include orders for protection and no contact orders; exempting certain domestic abuse or sexual attack programs from data practices requirements; extending area for protection to a reasonable area around residence or dwelling in ex parte orders for protection; modifying crime of stalking; authorizing a pilot project to allow judges to order electronic monitoring for domestic abuse offenders on pretrial release; imposing criminal penalties; amending Minnesota Statutes 2008, sections 299C.46, subdivision 6; 518B.01, subdivision 7; 609.498, subdivision 3, by adding a subdivision; 609.749; 629.471, subdivision 3, by adding a subdivision; 629.72, subdivisions 1, 2a; proposing coding for new law in Minnesota Statutes, chapters 13; 629; repealing Minnesota Statutes 2008, section 518B.01, subdivision 22.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[13.823] DOMESTIC ABUSE OR SEXUAL ATTACK PROGRAMS.**

Subdivision 1. **Definitions.** For purposes of this section:

(1) "domestic abuse" has the meaning given in section 518B.01, subdivision 2; and

(2) "sexual attack" has the meaning given in section 611A.21, subdivision 2.

Subd. 2. **Provisions not applicable.** Except as otherwise provided in this subdivision, a program that provides shelter or support services to victims of domestic abuse or a sexual attack and whose employees or volunteers are not under the direct supervision of a government entity is not subject to this chapter, except that the program shall comply with sections 611A.32, subdivision 5, and 611A.371, subdivision 3.

Sec. 2. Minnesota Statutes 2008, section 299C.46, subdivision 6, is amended to read:

Subd. 6. **Orders for protection and no contact orders.** (a) As used in this subdivision, "no contact orders" include orders issued as pretrial orders under section 629.72, subdivision 2; orders under section 629.75; and orders issued as probationary or sentencing orders at the time of disposition in a criminal domestic abuse case.

(b) The data communications network must include orders for protection issued under section 518B.01 and no contact orders issued under section 629.715, subdivision 4 against adults and juveniles. A no contact order must be accompanied by a photograph of the offender for the purpose of enforcement of the order, if a photograph is available and verified by the court to be an image of the defendant.

Sec. 3. Minnesota Statutes 2008, section 518B.01, subdivision 7, is amended to read:

Subd. 7. **Ex parte order.** (a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:

(1) restraining the abusing party from committing acts of domestic abuse;

(2) excluding any party from the dwelling they share or from the residence of the other, including a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order, except by further order of the court;

(3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment;

(4) ordering the abusing party to have no contact with the petitioner whether in person, by telephone, mail, e-mail, through electronic devices, or through a third party; and

(5) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

(b) A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.

(c) Subject to paragraph (d), an ex parte order for protection shall be effective for a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until modified or vacated by the court pursuant to a hearing. When signed by a referee, the ex parte order becomes effective upon the referee's signature. Upon request, a hearing, as provided by this section, shall be set. Except as provided in paragraph (d), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this

subdivision must include a notice advising the respondent of the right to request a hearing, must be accompanied by a form that can be used by the respondent to request a hearing and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

(d) Service of the ex parte order may be made by published notice, as provided under subdivision 5, provided that the petitioner files the affidavit required under that subdivision. If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in paragraph (c). Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

(e) If the petitioner seeks relief under subdivision 6 other than the relief described in paragraph (a), the petitioner must request a hearing to obtain the additional relief.

(f) Nothing in this subdivision affects the right of a party to seek modification of an order under subdivision 11.

Sec. 4. Minnesota Statutes 2008, section 609.498, is amended by adding a subdivision to read:

Subd. 2a. **Tampering with a witness in the third degree.** (a) Unless a greater penalty is applicable under subdivision 1, 1b, or 2, whoever does any of the following is guilty of tampering with a witness in the third degree and may be sentenced as provided in subdivision 3:

(1) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of intimidation, a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(2) by means of intimidation, intentionally influences or attempts to influence a person who is or may become a witness to testify falsely at any trial, proceeding, or inquiry authorized by law;

(3) intentionally prevents or dissuades, or attempts to prevent or dissuade by means of intimidation, a person from providing information to law enforcement authorities concerning a crime; or

(4) by means of intimidation, intentionally influences or attempts to influence a person to provide false information concerning a crime to law enforcement authorities.

(b) In a prosecution under this subdivision, proof of intimidation may be based on a specific act or on the totality of the circumstances.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2008, section 609.498, subdivision 3, is amended to read:

Subd. 3. **Sentence.** (a) Whoever violates subdivision 2 ~~may be sentenced to imprisonment for not more than one year or to payment of a fine not to exceed \$3,000~~ is guilty of a gross misdemeanor.

(b) Whoever violates subdivision 2a is guilty of a misdemeanor.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2008, section 609.749, is amended to read:

**609.749 HARASSMENT; STALKING; PENALTIES.**

Subdivision 1. **Definition.** As used in this section, "~~harass~~" "stalking" means to engage in ~~intentional~~ conduct which: ~~(1)~~ the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and ~~(2)~~ causes this reaction on the part of the victim regardless of the relationship between the actor and victim.

Subd. 1a. **No proof of specific intent required.** In a prosecution under this section, the state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated, or except as otherwise provided in subdivision 3, paragraph (a), clause (4), or paragraph (b), that the actor intended to cause any other result.

Subd. 1b. **Venue.** (a) When acts constituting a violation of this section are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.

(b) The conduct described in subdivision 2, clause (4), (5), or (8), may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established by chapter 5B. The conduct described in subdivision 2, clause (2), may be prosecuted where the actor or victim resides. The conduct described in subdivision 2, clause (6), may be prosecuted where any letter, telegram, message, package, or other object is sent or received or, in the case of wireless or electronic communication or communication made through other available technologies,

where the actor or victim resides or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established by chapter 5B.

Subd. 1c. **Arrest.** For all violations under this section, except a violation of subdivision 2, clause (8), a peace officer may make an arrest under the provisions of section 629.34. A peace officer may not make a warrantless, custodial arrest of any person for a violation of subdivision 2, clause (8).

Subd. 2. **Harassment and Stalking crimes.** (a) A person who ~~harasses~~ stalks another by committing any of the following acts is guilty of a gross misdemeanor:

(1) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;

(2) ~~stalks~~, follows, monitors, or pursues another, whether in person or through any available technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for the visually or hearing impaired, or any communication made through any available technologies or other objects; or

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties.

~~(b) The conduct described in paragraph (a), clauses (4) and (5), may be prosecuted at the place where any call is either made or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides. The conduct described in paragraph (a), clause (2), may be prosecuted where the actor or victim resides. The conduct described in paragraph (a), clause (6), may be prosecuted where any letter, telegram, message, package, or other object is either sent or received or, additionally in the case of wireless or electronic communication, where the actor or victim resides.~~

~~(c) A peace officer may not make a warrantless, custodial arrest of any person for a violation of paragraph (a), clause (7).~~

Subd. 3. **Aggravated violations.** (a) A person who commits any of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:

(1) commits any offense described in subdivision 2 because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(2) commits any offense described in subdivision 2 by falsely impersonating another;

(3) commits any offense described in subdivision 2 and possesses a dangerous weapon at the time of the offense;

(4) ~~harasses~~ stalks another, as defined in subdivision 1, with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(5) commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim.

(b) A person who commits any offense described in subdivision 2 against a victim under the age of 18, if the actor is more than 36 months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 4. **Second or subsequent violations; felony.** (a) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency, and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) A person is guilty of a felony who violates any provision of subdivision 2 within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency, and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 5. **Pattern of ~~harassing~~ stalking conduct.** (a) A person who engages in a pattern of ~~harassing~~ stalking conduct with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(b) For purposes of this subdivision, a "pattern of ~~harassing~~ stalking conduct" means two or more acts within a five-year period that violate or attempt to violate the provisions

of any of the following or a similar law of another state, the United States, the District of Columbia, ~~tribal lands~~ tribe, or United States territories:

(1) this section;

(2) sections 609.185 to 609.205 (first- to third-degree murder and first- and second-degree manslaughter);

~~(2)~~ (3) section 609.713 (terroristic threats);

~~(3)~~ (4) section 609.224 (fifth-degree assault);

~~(4)~~ (5) section 609.2242 (domestic assault);

~~(5)~~ (6) section 518B.01, subdivision 14 (violations of domestic abuse orders for protection);

~~(6)~~ (7) section 609.748, subdivision 6 (violations of harassment restraining orders);

~~(7)~~ (8) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7) (certain trespass offenses);

(9) section 609.78, subdivision 2 (interference with an emergency call);

~~(8)~~ (10) section 609.79 (obscene or harassing telephone calls);

~~(9)~~ (11) section 609.795 (letter, telegram, or package; opening; harassment);

~~(10)~~ (12) section 609.582 (burglary);

~~(11)~~ (13) section 609.595 (damage to property);

~~(12)~~ (14) section 609.765 (criminal defamation); or

~~(13)~~ (15) sections 609.342 to 609.3451 (first- to fifth-degree criminal sexual conduct); or

(16) section 629.75, subdivision 2 (violations of domestic abuse no contact orders).

~~(c) When acts constituting a violation of this subdivision are committed in two or more counties, the accused may be prosecuted in any county in which one of the acts was committed for all acts constituting the pattern.~~ Words set forth in parentheses after references to statutory sections in paragraph (b) are mere catchwords included solely for convenience in reference. They are not substantive and may not be used to construe or limit the meaning of the cited statutory provision.

**Subd. 6. Mental health assessment and treatment.** (a) When a person is convicted of a felony offense under this section, or another felony offense arising out of a charge based on this section, the court shall order an independent professional mental health assessment of the offender's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

(b) Notwithstanding sections 13.384, 13.85, 144.291 to 144.298, 260B.171, or 260C.171, the assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

- (1) medical data under section 13.384;
- (2) welfare data under section 13.46;
- (3) corrections and detention data under section 13.85;
- (4) health records under sections 144.291 to 144.298; and
- (5) juvenile court records under sections 260B.171 and 260C.171.

Data disclosed under this section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

(c) If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

(d) The court shall order the offender to pay the costs of assessment under this subdivision unless the offender is indigent under section 563.01.

Subd. 7. **Exception.** Conduct is not a crime under this section if it is performed under terms of a valid license, to ensure compliance with a court order, or to carry out a specific lawful commercial purpose or employment duty, is authorized or required by a valid contract, or is authorized, required, or protected by state ~~or~~ federal, or tribal law or the state ~~or~~ federal, or tribal constitutions. Subdivision 2, clause (2), does not impair the right of any individual or group to engage in speech protected by the federal ~~Constitution, state, or tribal constitutions, the state Constitution, or federal~~ or state, or tribal law, including peaceful and lawful handbilling and picketing.

Subd. 8. **Stalking; firearms.** (a) When a person is convicted of a ~~harassment or~~ stalking crime under this section and the court determines that the person used a firearm in any way during commission of the crime, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a gross misdemeanor to violate this paragraph. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the gross misdemeanor penalty to that defendant.

(b) Except as otherwise provided in paragraph (a), when a person is convicted of a ~~stalking or harassment~~ crime under this section, the court shall inform the defendant that the defendant is prohibited from possessing a pistol for three years from the date of conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol possession prohibition or the gross misdemeanor penalty to that defendant.



(c) Except as otherwise provided in paragraph (a), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of a stalking or harassment crime under this section, unless three years have elapsed from the date of conviction and, during that time, the person has not been convicted of any other violation of this section. Property rights may not be abated but access may be restricted by the courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross misdemeanor.

(d) If the court determines that a person convicted of a stalking or harassment crime under this section owns or possesses a firearm and used it in any way during the commission of the crime, it shall order that the firearm be summarily forfeited under section 609.5316, subdivision 3.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2008, section 629.471, subdivision 3, is amended to read:

Subd. 3. **Six times fine.** For offenses under sections ~~518B.01~~, 609.224, ~~609.2242~~, and 609.377, the maximum cash bail that may be required for a person charged with a misdemeanor or gross misdemeanor violation is six times the highest cash fine that may be imposed for the offense.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 8. Minnesota Statutes 2008, section 629.471, is amended by adding a subdivision to read:

Subd. 3a. **Ten times fine.** For offenses under sections 518B.01, 609.2242, and 629.75, the maximum cash bail that may be required for a person charged with a misdemeanor or gross misdemeanor violation is ten times the highest cash fine that may be imposed for the offense.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 9. Minnesota Statutes 2008, section 629.72, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given them.

(b) "Domestic abuse" has the meaning given in section 518B.01, subdivision 2.

(c) "Harassment" has the meaning given in section 609.749.

(d) "Violation of a domestic abuse no contact order" has the meaning given in section ~~518B.01, subdivision 22~~ 629.75.

(e) "Violation of an order for protection" has the meaning given in section 518B.01, subdivision 14.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 10. Minnesota Statutes 2008, section 629.72, subdivision 2a, is amended to read:

Subd. 2a. **Electronic monitoring; condition of pretrial release.** (a) Until the commissioner of corrections has adopted standards governing electronic monitoring devices used to protect victims of domestic abuse, the court, as a condition of release, may not order a person arrested for a crime described in section 609.135, subdivision 5a, paragraph (b), to use an electronic monitoring device to protect a victim's safety.

(b) Notwithstanding paragraph (a), ~~district courts in the Tenth~~ the chief judge of a judicial district may order, as a condition of a release, a person arrested on a charge of a crime described in section 609.135, subdivision 5a, paragraph (b), to use an electronic monitoring device to protect the victim's safety. The courts shall make data on the use of electronic monitoring devices to protect a victim's safety in the Tenth Judicial District available to the commissioner of corrections to evaluate and to aid in development of standards for the use of devices to protect victims of domestic abuse appoint and convene an advisory group comprised of representatives from law enforcement, prosecutors, defense attorneys, corrections, court administrators, judges, and battered women's organizations to develop standards for the use of electronic monitoring and global positioning system devices to protect victims of domestic abuse and for evaluating the effectiveness of electronic monitoring. After the advisory group does this, the chief judge, in consultation with the advisory group, may conduct a pilot project for implementation of the electronic monitoring standards. A judicial district that conducts a pilot project shall report on the standards and the pilot project to the chairs and ranking minority members of the senate and house of representatives committees having jurisdiction over criminal justice policy and the state court administrator's office.

**SUNSET.** The amendments to this section expire on January 15, 2014.

Sec. 11. **[629.75] DOMESTIC ABUSE NO CONTACT ORDER.**

Subdivision 1. **Establishment; description.** (a) A domestic abuse no contact order is an order issued by a court against a defendant in a criminal proceeding or a juvenile offender in a delinquency proceeding for:

(1) domestic abuse as defined in section 518B.01, subdivision 2;

(2) harassment or stalking under section 609.749 when committed against a family or household member as defined in section 518B.01, subdivision 2;

(3) violation of an order for protection under section 518B.01, subdivision 14; or

(4) violation of a prior domestic abuse no contact order under this subdivision or section 518B.01, subdivision 22.

(b) A domestic abuse no contact order may be issued as a pretrial order before final disposition of the underlying criminal case or as a postconviction probationary order. A domestic abuse no contact order is independent of any condition of pretrial release or probation imposed on the defendant. A domestic abuse no contact order may be issued in addition to a similar restriction imposed as a condition of pretrial release or probation. In the context of a postconviction probationary order, a domestic abuse no contact order may be issued for an offense listed in paragraph (a) or for a conviction for any offense arising out of the same set of circumstances as an offense listed in paragraph (a).

(c) A no contact order under this section shall be issued in a proceeding that is separate from but held immediately following one in which any pretrial release or sentencing issues are decided.

Subd. 2. **Criminal penalties.** (a) As used in this subdivision "qualified domestic violence-related offense" has the meaning given in section 609.02, subdivision 16.

(b) A person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.

(c) A person is guilty of a gross misdemeanor who knowingly violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of ten days' imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court as provided in section 518B.02. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person knowingly violates this subdivision: (1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications

of delinquency; or (2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6. Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for felony convictions.

**Subd. 3. Warrantless custodial arrest.** A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a domestic abuse no contact order, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this subdivision is immune from civil liability that might result from the officer's actions.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 12. **REVISOR'S INSTRUCTION.**

(a) The revisor of statutes shall replace references to Minnesota Statutes, section 518B.01, subdivision 22, in statutes and rules with a reference to Minnesota Statutes, section 629.75.

(b) The revisor of statutes shall make any cross-reference and technical language changes to Minnesota Statutes made necessary by section 6.

Sec. 13. **REPEALER.**

Minnesota Statutes 2008, section 518B.01, subdivision 22, is repealed.

**EFFECTIVE DATE.** This section is effective August 1, 2010, and applies to crimes committed on or after that date.